

**154.34-080 Reinvestment agreement -- Tax credits -- Termination of agreement -- Availability of company records -- Prohibition on transfer or assignment.**

The authority, upon adoption of its final approval, may enter into with any approved company a reinvestment agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each reinvestment agreement shall include the following provisions:

- (1) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document its expenditures of the eligible costs attributable to the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
- (2) In consideration of the execution of the agreement between the authority and approved company, the approved company may be permitted one (1) or both of the following inducements:
  - (a) A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the reinvestment project as determined under KRS 141.415, and a credit against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205;
  - (b) A credit against the Kentucky license tax imposed by KRS 136.070 on the approved company as determined under KRS 141.416;
- (3) The total inducements authorized in the agreement for the benefits of the approved company shall be equal to the lesser of the total amount of the tax liability or the approved costs that have not yet been recovered. The inducements shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits, or Kentucky gross receipts from the project;
- (4) The agreement shall provide that the term shall not be longer than the earlier of:
  - (a) The date on which the approved company has received inducements equal to the approved costs of its reinvestment project; or
  - (b) Ten (10) years from the date of final approval granted by the authority;
- (5) All eligible costs of the project shall be expended by the approved company within three (3) years from the date of final approval by the authority. In the event that all eligible costs of the project are not fully expended by the approved company within the three (3) year period, the authority is authorized to:
  - (a) Reduce the inducements; or
  - (b) Suspend the inducements; or

- (c) Terminate the agreement;
- (6) If the agreement is terminated, the authority may require the approved company to repay the Department of Revenue of the Commonwealth all or part of any inducements received by the approved company prior to the termination of the agreement;
- (7) The agreement shall specify that the approved company shall make available all of its records pertaining to the project, including but not limited to payroll records, records relating to the expenditure of eligible costs and approved costs, and any other records pertaining to the project as the authority may require; and
- (8) The agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority.

**Effective:** June 28, 2006

**History:** Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 62, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 585, effective June 20, 2005. -- Created 2003 Ky. Acts ch. 148, sec. 8, effective June 24, 2003.

**Legislative Research Commission Note** (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."